

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1513 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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RAMUBHAI MANGABHAI CHAUDHARI

Versus

SUPERINTENDENT, MENTAL HOSPITAL  
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Appearance:

MR PM BHATT for Petitioners  
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CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 24/08/2000

ORAL JUDGEMENT

1. This is an appeal u/s 96 of the Civil Procedure Code at the instance of the original plaintiffs, whose suit has been dismissed by the impugned judgement and

order of the City Civil Court, Ahmedabad.

2. It is pertinent to note at this stage that the eight appellants had filed one suit as eight plaintiffs, wherein eight different notices issued by the first defendant separately to each of the eight plaintiffs, each notice pertaining to a different plot of land, was challenged in one suit, with reference only to the common date and without reference to the different notice numbers. Thus, the eight different plaintiffs challenged eight different notices pertaining to eight different pieces of land by a common suit and a common prayer. Obviously, the trial Court did not notice this situation and therefore, no issue was raised on this point. However, the fact remains that such a suit suffers from misjoinder of causes of action inasmuch as each plaintiff has a separate and distinct cause of action which is sought to be combined in one suit. It is also pertinent to note that the relevant prayer clause in the suit does not refer to the eight notices addressed individually to the eight plaintiffs, but only seeks the declaration that "the notice dated 15th October 1996" is illegal and void etc. Obviously, the suit could and should have been dismissed on this ground alone.

3. The appellants - plaintiffs contend that the notice(s) issued by the first defendant to vacate the particular plot of land in question was a notice which was illegal and void and sought a declaration to that effect. Consequential relief in this context was also sought by way of a permanent prohibitory injunction.

3.1 The plaintiffs further sought a declaration of title in their favour in respect of particular plot of land on the ground that each of the plaintiffs had become an owner of his piece of land, by perfection of title, on account of the plaintiffs' holding hostile possession in respect of that land over a period of 40 years or more, on the application of the principle of adverse possession.

4. It is pertinent to note that each of the plaintiffs claims to be the owner of a kuchcha hut constructed upon a meagre area of land, which forms part of the compound of the old Mental Hospital, outside Delhi Darwaja, Ahmedabad.

5. The contention of learned counsel for the appellants - plaintiffs before me is based upon a mere assertion that the plaintiffs have established that they have acquired title by virtue of adverse possession.

However, before such a bald statement can be accepted in law, it must be realized that the plaintiff can only claim ripening of title by adverse possession, provided two essential ingredients of the principle are established.

5.1 The first ingredient is that the possession of the plaintiff must be found to be hostile possession, that is to say, possession which the plaintiff held must be openly hostile to the title of the true owner. In this context, establishing mere possession is not sufficient. It could well be that such possession was as a licensee or in the capacity of a tenant. Such possession could not possibly be categorized as hostile possession, and consequently, the principle of adverse possession would have no application at all. Learned counsel for the appellants - plaintiffs is unable to point out the slightest or smallest iota of evidence from which it could be asserted that the plaintiffs have established hostile possession as against mere possession.

5.2 The second aspect or the second essential ingredient of acquiring title by adverse possession is, even when hostile possession is established, that hostile possession enjoyed by the plaintiff must be such to which the defendants have acquiesced. In other words, the hostile possession held by the plaintiffs must have been accepted by the defendants without protest or attempts to regain possession. In this context, it is not necessary that the defendants can protest to the hostile possession held by the plaintiffs only by way of filing a suit for declaration of title and/or for possession. Such protest to the hostile possession claimed by the plaintiffs can take many forms, including the issuance of notice to vacate the premises. There is ample evidence on record, produced by the plaintiffs themselves, that even during the period while the plaintiffs were in possession, and on occasions prior to the issuance of the suit notices, the defendants had made numerous attempts to obtain possession of the very same suit lands. Thus, on these facts, it could not possibly be said that the defendants had acquiesced to the hostile possession allegedly held by the plaintiffs.

6. To conclude therefore, I am in general agreement with the trial Court on appreciation of the evidence on record, the findings of fact recorded and the conclusions drawn therefrom. I therefore see no justification in interfering with the impugned judgement and order by way of the present appeal.

7. This appeal is therefore summarily dismissed.

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